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BAY AREA RAPID TRANSIT DISTRICT

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

JOSEPH JAMES GREER,	) Case No. 3:15-cv-02307-WHO
Plaintiff,	)
v.	) <b>DECLARATION OF JARED</b>
	) <b>ZWICKEY IN SUPPORT OF</b>
CITY OF HAYWARD, BAY AREA	) <b>DEFENDANT BAY AREA RAPID</b>
RAPID TRANSIT DISTRICT, and DOES	) <b>TRANSIT DISTRICT'S MOTION</b>
1-50,	) <b>FOR SUMMARY JUDGMENT OR</b>
Defendant.	) <b>PARTIAL SUMMARY</b>
	) <b>JUDGMENT AND</b>
	) <b>MEMORANDUM OF POINTS</b>
	) <b>AND AUTHORITIES IN SUPPORT</b>
	) <b>THEREOF</b>

Date: January 4, 2017  
Time: 2:00 p.m.  
Court Room: 2

I, Jared Zwickey, declare:

1. I am currently employed with San Joaquin Delta College District as an Associate Professor in the Administration of Justice Discipline, after serving for fifteen years as the Director of Police Services and Public Safety Programs in which I was responsible for, among other things, managing the campus police department and basic officer training at the Delta College and Stanislaus Sheriff's Regional Training Center, the California Dept. of Corrections- Juvenile Justice Institutions Academy, the Fire Technology program and the Administration of Justice and Corrections academic programs.

2. I also teach firearms, defensive tactics, criminal law, search and seizure, and use of

1 force in the Basic Police Officer Academy program for numerous law enforcement agencies  
2 including the California Department of Corrections, Fire Service agencies, state and federal law  
3 enforcement personnel and members of the United States Military.

4 3. I also teach Administration of Justice courses as an adjunct instructor for the  
5 Yosemite Community College District. I am also employed by Institute of Technology as a use of  
6 force and firearms instructor.

7 4. I work closely with the California Commission on Basic Police Officer Standards  
8 and Training (POST) to develop course curriculums used in the police academy. I currently serve  
9 as the use of force subject matter expert representing the Basic Police Officer Academy sponsored  
10 programs in the State of California.

11 5. I hold all Commission Police Officers Standards and Training certifications that can  
12 be issued to a law enforcement officer in the State California which certify my multiple areas of  
13 expertise. I have a F.B.I. Firearms Instructor Certificate, and POST certifications as a defensive  
14 tactics instructor, impact weapons instructor, basic and advanced narcotics and dangerous drugs,  
15 test proctor, basic course academy instructor of perishable skills and racial discrimination profile  
16 instructor.

17 6. I have served on numerous POST committees as a canine, tactics, use of force,  
18 firearms and scenario training expert and as a subject matter expert for the basic academy course  
19 training materials in order to develop program guidelines for law enforcement certification  
20 programs. I am a member of the POST Consortium Advisory Committee and subject matter expert  
21 evaluation team to ensure consistency between training specifications and workbook training  
22 materials for the basic academy course among the forty training academies in the State of  
23 California.

24 7. I have a Bachelor's Degree in Administration of Justice from Golden Gate  
25 University and am a graduate of the California Command College and the Federal Bureau of  
26 Investigation National Academy.

27 8. I have thirty-eight years of law enforcement experience and forty years of training  
28 experience as an Administration of Justice instructor at the Community College level. In

1 particular, I worked as a law enforcement officer with the City of Concord as a Patrol and Traffic  
 2 Sergeant, Special Investigations, Operations and Administrative Lieutenant, Captain of the  
 3 Operations Division and Acting Chief of Police. I routinely reviewed citizen complaints and  
 4 investigated alleged acts of misconduct and administered progressive discipline when allegations  
 5 were sustained.

6 9. I then served as the Chief of Police for the City of Tracy in which I conducted and  
 7 directed internal affairs investigations into alleged acts of misconduct and administered progressive  
 8 discipline.

9 10. As the Director of Police Services at San Joaquin Delta College, I was responsible  
 10 for the oversight of personnel in the police department and I directed numerous internal affairs  
 11 investigations into alleged acts of misconduct and administered progressive discipline.

12 11. I have testified in approximately seventy-three cases over the past forty years  
 13 including, but not limited to, use of force, law enforcement policies and practices and tactical and  
 14 investigation procedures. I have testified in both state and federal courts.

15 12. I was retained to serve as an expert to evaluate the reasonableness of the use of force  
 16 by BART Police Sgt. Jon Tougas on May 23, 2014 and BART's policy on the use of force. To this  
 17 end, I reviewed numerous materials, including but not limited to, the Hayward and BART police  
 18 reports, BART police video, the autopsy and the coroner's reports, and the depositions of Hayward  
 19 Lieutenant Lutzinger, Hayward Officer Lewandowski, Hayward Officer Cosgriff, Hayward Officer  
 20 Tong, Hayward Officer McAdams, Hayward paramedic Brassfield and BART Sgt. Tougas and  
 21 BART's use of force policy.

22 13. It is my expert opinion that BART Sgt. Tougas used reasonable force on May 23,  
 23 2014. A reasonably well-trained police officer, when confronted with the same or similar facts,  
 24 would have followed the same policies and procedures to detain Mr. Greer. The type and amount  
 25 of force used by Sgt. Tougas to help control Mr. Greer was consistent with his training and  
 26 experience, current law enforcement policies and procedures and departmental policy. Sgt. Tougas  
 27 reasonably believed that Mr. Greer's actions, in walking away from the field sobriety test being  
 28 administered by Hayward Lieutenant Lutzinger and failing to comply with lawful police

1 commands, constituted a criminal act.

2 14. The officers, including Sgt. Tougas, used de-escalation techniques on Mr. Greer by  
3 repeatedly telling him to calm down, relax and to put his hands behind his back. Mr. Greer was  
4 told at least five times to relax and seven times to put his hands behind his back before Mr. Greer  
5 and the officers fell to the ground. All total, the officers including Sgt. Tougas, told Mr. Greer  
6 approximately thirteen times to put his hands behind his back and approximately thirty times to  
7 calm down and to stop resisting before he was ultimately handcuffed.

8 15. A police officer's use of force is based on objective factors and the amount of force  
9 used must be balanced against the need for the use of force. Considerations for use of force  
10 include, but are not limited to, the subject's display of aggressive or assaultive behavior, the  
11 physical size of the subject compared with the officer, the need for immediate control of the subject  
12 due to tactical considerations, the officer's perception of the subject's knowledge of fighting skills  
13 and the ability to control the subject by other means. Each situation will require police officers to  
14 exercise judgment in the use of force.

15 16. In this case, Sgt. Tougas and the Hayward officers, were unable to control Mr.  
16 Greer's active and violent resistance through their command presence and verbal commands. Sgt.  
17 Tougas used only the amount of force objectively reasonable under the circumstances. Mr. Greer  
18 grabbed the trailer hitch and repeatedly kept his hands tucked underneath his torso in an effort to  
19 resist the officers placing him into handcuffs. At one point, the Hayward officers applied a  
20 handcuff to Mr. Greer's left wrist, but he then pulled it free of the grasp of the Hayward officers  
21 and the struggle continued.

22 17. A reasonably well-trained police officer, such as BART Sgt. Tougas, would have  
23 properly relied on his training and experience in making a split-second decision to control Mr.  
24 Greer changed his behavior and demeanor. Mr. Greer posed an immediate and credible threat to  
25 the officers and as it turned out, Mr. Greer had a lethal dose of phencyclidine (PCP) in his system.  
26 PCP has hallucinogenic properties that has been known to cause visual and auditory distortions,  
27 perceptual changes, delusional thinking and would explain the officers' description that Mr. Greer  
28 exhibited extraordinary strength. In particular, Mr. Greer, who weighed approximately 380

1 pounds, was able to resist for several minutes the physical efforts of 4-6 police officers to control  
 2 him, pain-compliance techniques administered by the Hayward police officers and being tased  
 3 three times by Hayward police officers. Mr. Greer continued to resist and struggle even after being  
 4 tased and the administration of pain compliance techniques by the Hayward police officers.

5 18. Sgt. Tougas used prudent and reasonable actions and in fact, used minimal efforts,  
 6 to overcome Mr. Greer's active resistance.

7 19. There is no evidence that BART Sgt. Tougas punched, kicked, used a baton or any  
 8 type of impact weapon, used a taser, or in any way sat on, kneeled, straddled or compressed Mr.  
 9 Greer's torso in such a way to inhibit his breathing. There is also no evidence that Sgt. Tougas in  
 10 any way "slammed" Mr. Greer to the ground. Sgt. Tougas was not involved in application of the  
 11 WRAP.

12 20. Once Mr. Greer was handcuffed, Sgt. Tougas observed that a Hayward officer was  
 13 taking Mr. Greer's pulse and reasonably deferred to Hayward firefighter-paramedic Brassfield to  
 14 provide medical care to Mr. Greer. As a police officer, Sgt. Tougas has basic training in first aid  
 15 and cardiopulmonary resuscitation, but a firefighter-paramedic has more experience, training and  
 16 skill than a police officer in rendering medical attention. Based on my review of the video from  
 17 Sgt. Tougas' body camera, it appears that the paramedics responded to the scene in less than one  
 18 minute after being notified to respond to the scene. The firefighter-paramedic initially staged  
 19 nearby for their safety until the scene was clear.

20 21. The use of force by Sgt. Tougas was consistent with BART's written use of force  
 21 policy. Under *Graham v. Conner*, 490 U.S. 386 (1989), the reasonableness of force must be  
 22 judged from the perspective of an objectively reasonable officer on scene, on the totality of  
 23 circumstances and not through 20/20 hindsight.

24 22. I declare under penalty of perjury under the laws of the State of California that the  
 25 foregoing is true and correct, is within my personal knowledge and if called as a witness I am  
 26 competent to testify thereto. Executed on November 21, 2016 at Manteca, CA.

27  
 28   
 JARED ZWICKEY

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